IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 15327 of 2004

Between:

S.Shareef S/o.Hussain Sab
R/o. Gazulapalli, Mahanandi Mandal Kurnool District.

..... PETITIONER

AND

1 The Divisional Forest Officer Wildlife, Nandyal, Kurnool District.
2 The Forest Range Officer Wildlife, Nadyal Kurnool District.
3 The Conservator of Forests, Kurnool Circle, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of Certiorari call for records made in Rc.No.4490/1999-M6 dated 7.6.2004 on the file of the 3rd respondent and quash the same as illegal, arbitrary, violative of Art.19(1) (g) of the Constitution of India.

For the Petitioner: MR.G.V.N.PRASAD , Advocate

For the Respondents: GP FOR FORESTS

The Court at the admission stage made the following :

ORDER:

In this writ petition filed under Art. 226 of the Constitution of India, the petitioner seeks a writ of Certiorari for calling the records in RC No.4490/1999-M6 dt. 7-6-2004 from the third respondent and for quashing the same.

By the impugned order, Conservator of Forests, Kurnool Circle, Kurnool partly allowed the appeal filed by the petitioner against the orders of compounding the offence for Rs.70,000/- passed by the Divisional Forest Officer, Wildlife, Nandyal, fixing the compounding fee for two times of value of the seized forest produce ie., 20396 x 2 = 40792/- by confirming the confiscation of forest produce as ordered by the Divisional Forest Officer. It is not in dispute the lorry of the petitioner was seized while transporting small Sandra and miscellaneous rough dressed timber on 30-3-1999 and the Divisional Forest Officer passed an order under Section 59 compounding the offence for Rs.70,000/- and ordering confiscation of the timber pieces. The timber pieces which were confiscated was sold in an open auction and fetched only Rs.1340/- by treating it as fuel wood. On such compounding the offence, the petitioner preferred an appeal before the Conservator of Forests, Kurnool Circle, which was dismissed on 19-6-1999. Against which, the petitioner filed WP No.16222/2000 before this court. This court by its order dt. 3-3-2004 set-aside the order passed by the Conservator of Forests dt. 19-6-1999 and directed him to consider the appeal afresh taking into account the grounds of appeal raised by the petitioner. On such remand, the third respondent allowed

the appeal partly, as stated above, by the impugned order. Questioning the same, the present writ petition has been filed contending that the petitioner never agreed for compounding the offence but respondents took the thumb impression on a white paper and have written that the petitioner agreed to compound the offence, which resulted in passing the impugned orders of compounding the offence by the Divisional Forest Officer.

Learned Government Pleader for Forest made available the record, which discloses that page No.15 is written in Telugu, wherein the petitioner agreed for compounding the offence and amount so compounded will be paid in instalment.

Admittedly, the petition said to have been submitted by the petitioner, which was at page No.15 in the file, was not filed in prescribed proforma as contemplated under Rule 5 of the Andhra Pradesh Forest Offences (Compounding and Prosecution) Rules, 1969 (for short "the Rules"). Rule 5 envisages that every accused who expresses his willingness to have the offence compounded as provided in Rule 4 shall forthwith give a written undertaking in Form-D. Rule 6 contemplates that if immediately after the offence is detected or at the time of enquiry, the accused is willing to pay in advance the amount towards compensation to be fixed under Sec. 59 of the Act, any Forest Officer not below the rank of a Forester may accept such amount and shall issue a receipt for the amount so received without prejudice to any decision that may be taken by the competent authority under the Rules in regard to the quantum of compensation or the necessity or otherwise to compound the offence. Rule 9 of the Rules contemplates that where competent officer refuses to compound the offence amount received towards advance from the accused shall be refunded.

What follows from the above rules is the accused must file an application to compound the offence in the prescribed proforma and is willing to pay in advance any amount towards compensation to be fixed, then only the respondents can proceed to compound the offence. Since the file produced do not indicate about filing of such an application in the prescribed form, compounding offence by the first respondent for three times of the value of the seized forest produce worth Rs.20396/- suffers from incurable infirmities and same is not sustainable. The appellate authority has not considered the said aspect in proper perspective and allowed the appeal restricting the same to two times of the value of the seized forest produce. When it is admitted that the produce which was unloaded from the lorry was 510 numbers of small sundra and rough dressed timber was valued at Rs.20396/- but it fetched only Rs.1340/- in the open auction , therefore, the value assessed while compounding the offence was not properly evaluated. In such a situation, normally this

court can remand the matter to the lower court while setting aside the said order. Once that exercise has already been exercised and matter has been remanded. To have a quietus to the litigation, compound fee as fixed by the Conservator of Forest at Rs.40792/- is reduced to Rs.15000/-. On receipt of such amount only, the petitioner shall stand discharged of the offence, lorry shall be released in favour of the petitioner and no further proceedings shall be taken against such person or property.

The writ petition is accordingly disposed of. No costs.

8-10-2004

KMR

To

One Fair copy to the Honoruable Mr. Justice A.Gopal Reddy (for his Lordships kind perusal)

1 the Divisional Forest Officer Wildlife, Nandyal, Kurnool District.
2 The Forest Range Officer Wildlife, Nadyal Kurnool District.
3 The Conservator of Forests, Kurnool Circle, Kurnool District.

4. 2 CCs to the Govt., Pleader for Forest,High Court Building, Hyderabad (OUT)

5. 2CD copies

6. 8 LR copies

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New

Delhi.

8. The Secretary, A.P. Advocate's Association Library, High Court Buildings, Hyderabad.

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